

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:12-CR-312-1BR
No. 5:18-CV-84-BR

MARCUS DORRELL BYRD,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

This matter is before the court on the government's motion to dismiss petitioner's first amended 28 U.S.C. § 2255 motion, (DE # 118), to which petitioner responded by filing a motion for leave to amend, (DE # 129), and his second amended § 2255 motion, (DE # 130). The government did not file a response to petitioner's motion to amend.

Rule 15 of the Federal Rules of Civil Procedure governs amendment of a § 2255 motion. See United States v. Pittman, 209 F.3d 314, 317 (4th Cir. 2000) ("[C]ourts have typically applied Federal Rule of Civil Procedure 15 to the amendment of a § 2255 motion." (citations omitted)). Under that rule, the court is obligated to "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). There appears to be no prejudice to the government by allowing amendment. See Pittman, 209 F.3d at 317. Therefore, the court deems petitioner's second amended § 2255 motion properly filed. The second amended § 2255 motion supersedes the first amended § 2255 motion, see Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001) ("The general rule . . . is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect."); Eaglin v. United States, No. 3:04-CR-0547-MBS, 2011 WL

489969, at *3 n.3 (D.S.C. Feb. 7, 2011) (“The Amended Motion to Vacate served to supersede and replace the original Motion to Vacate. Thereafter, the original Motion to Vacate did not perform any function . . .”), and moots the government’s motion to dismiss.

Petitioner’s motion to amend is ALLOWED. The United States Attorney is DIRECTED to file an answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the second amended § 2255 motion within 30 days. The government’s motion to dismiss petitioner’s first amended § 2255 motion is DENIED as moot.

This 27 March 2020.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge